

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRENDA JOHNSON,

Plaintiff,

V.

CITY OF LAKEWOOD and J. MILLS,

## Defendants.

CASE NO. 3:16-cv-05727-RJB

## ORDER

BEFORE THE COURT are Defendant City of Lakewood's Motion to Dismiss Pursuant  
CP 12(b)(6) (Dkt. 22) and three motions filed by Plaintiff: LCR 7 Cross Motion (k) and (l)  
rawing and Renoting Pending Motions (Dkt. 37), Motion for Default (Dkt. 38), and  
n for Default Judgment (Dkt. 39). The Court has considered the motions and the remainder  
file herein.

A. Defendant City of Lakewood's Motion to Dismiss Pursuant to FRCP 12(b)(6).

## 1. The Amended Complaint.

The Amended Complaint (Dkt. 4) alleges wrongful arrest and imprisonment on July 13, 2016, where Plaintiff was arrested with “a DOL Plate [*sic*] as the cause for the arrest,” but

1 “Plaintiff was not driving[.]” Dkt. 4 at ¶¶4. “Defendant came out on a call for tenant lock out for  
 2 Plaintiff,” and “Defendant drove Plaintiff to a residence.” *Id.* at ¶¶5, 6. Once at the residence,  
 3 Plaintiff’s daughter, Brittany, told Officer J. Mills that Plaintiff was “the ex-wife” of another  
 4 officer, which resulted in Officer J. Mills placing Plaintiff under arrest. *Id.* at ¶8.

5 The Amended Complaint cites twice to a “case# 161330105.” Dkt. 4 at ¶¶2, 14. The  
 6 Amended Complaint alleges claims “against (J. Mills badge #564) [sic] and the City of  
 7 Lakewood.” *Id.* at 1.

8 **2. Incident report cause #161330105.**

9 Counsel for Defendant City of Lakewood has attached to its motion a true and correct  
 10 copy of an incident report, cause #161330105, the report twice-cited in the Amended Complaint.  
 11 The incident report narrates an incident where an officer J. Mills of University Place Police  
 12 Department placed Plaintiff under arrest. Dkt. 22-1 at 3-10. According to the incident report,  
 13 “[Plaintiff] Brenda said tonight Brittany locked her out and wouldn’t let her in . . . We went to  
 14 the apartment and talked with Brittany . . . Brittany was upset, but grudgingly let Brenda back  
 15 into the house.” Dkt. 22-1 at 7. Next, according to the incident report, while in the parking lot,  
 16 Officer J. Mills and another officer “could hear two yelling within the apartment” and heard  
 17 “movement and bumping around.” *Id.* The narrative concludes with Officer J. Mills placing  
 18 Plaintiff under arrest for “Assault 4 DV,” based on statements given by Brittany and another  
 19 witness inside the house. *Id.*

20 **3. Standard for Motion to Dismiss under Fed. R. Civ. P. 12(b)(6).**

21 Fed. R. Civ. P. 12(b) motions to dismiss may be based on either the lack of a cognizable  
 22 legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri*  
 23 *v. Pacifica Police Department*, 901 F.2d 696, 699 (9<sup>th</sup> Cir. 1990). Material allegations are taken  
 24

1 as admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d  
2 1295 (9<sup>th</sup> Cir. 1983). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not  
3 need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement  
4 to relief requires more than labels and conclusions, and a formulaic recitation of the elements of  
5 a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65  
6 (2007)(internal citations omitted). "Factual allegations must be enough to raise a right to relief  
7 above the speculative level, on the assumption that all the allegations in the complaint are true  
8 (even if doubtful in fact)." *Id.* at 1965. Plaintiffs must allege "enough facts to state a claim to  
9 relief that is plausible on its face." *Id.* at 1974.

10 Under the "incorporation by reference" rule within the Ninth Circuit, courts "may look  
11 beyond the pleadings" to documents referenced extensively in the complaint and accepted as  
12 authentic without converting a Rule 12(b)(6) motion into one for summary judgment. *Van*  
13 *Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 981 (9<sup>th</sup> Cir. 2002).

14 **4. Discussion.**

15 Because the Amended Complaint twice references an incident report number and refers  
16 to overlapping facts within that police report, the Court has considered the incident report and the  
17 Amended Complaint.

18 As to Defendant City of Lakewood, Plaintiff has failed to state a claim because, put  
19 simply, she has alleged a claim against the wrong defendant. It is beyond dispute that the  
20 incident that gives rise to Plaintiff's unlawful arrest and imprisonment allegations stems from  
21 Plaintiff's interaction with Officer J. Mills (#564), who is not an employee of the City of  
22 Lakewood, but rather, is Police Deputy for the University Place Police Department. Dkt. 22-1 at  
23 12. Therefore, Plaintiff does not state a claim against Defendant City of Lakewood.

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1      Defendant City of Lakewood's motion to dismiss should be granted, and Defendant City  
2 of Lakewood should be dismissed with prejudice.

3      **B. Plaintiff's motions.**

4      **1. LCR 7 Cross Motion (k) and (l) Withdrawing and Renoting Pending Motions.**

5      It is unclear what relief Plaintiff requests in this motion. *See* Dkt. 37. For example, at the  
6 time that Plaintiff filed the motion, there were no pending motions, yet the caption requests  
7 "withdrawing and renoting pending motions." It appears that Plaintiff takes issue with the  
8 Court's *sua sponte* Order (Dkt. 28), which struck the Second Amended Complaint and Third  
9 Amended Complaint, which were not filed within 21 days of service, with opposing parties'  
10 consent, or with leave of the court. It appears that Plaintiff may be asking for leave to amend to  
11 add Nativity House as a named defendant. *See* Dkt. 37 at 2-4. Giving Plaintiff leave to amend the  
12 complaint to add Nativity House is not appropriate, because Plaintiff has not filed a copy of the  
13 proposed amended complaint. *See* W.D.Wash. Local Court Rule 15. Without the proposed  
14 amended complaint (and required demarcations), the Court cannot determine whether leave to  
15 amend is appropriate. Especially, given Plaintiff's prior attempts to add Nativity House as a  
16 defendant in an inappropriate manner, leave to amend is not warranted at this time.

17      Plaintiff's motion should be denied without prejudice.

18      **2. Motion for Default and Motion for Default Judgment**

19      Plaintiff seeks default and default judgment against Catholic Community Services of  
20 Western Washington. Dkts. 38, 39. Both motions should be denied, because Catholic  
21 Community Services is not a party to the case. *See* Dkt. 28. *See also*, Dkt. 36.

22      **C. Show cause as to Officer J.Mills.**

1 The only named defendants in the case are the City of Lakewood and Officer J. Mills.  
2 Dkt. 4. Because the City of Lakewood is dismissed from the case, Officer J. Mills is the only  
3 remaining named defendant.

4 Although Plaintiff may represent that she has served Officer J. Mills, he or she is not  
5 employed by the City of Lakewood, so serving that municipality with a summons and copy of  
6 the complaint is insufficient. Also insufficient is service of process via electronic means,  
7 including through CM/ECF. *See* Dkt. 5 (Plaintiff declaring that she has electronically served via  
8 the CM/ECF system “all participants” in the case except Assistant Attorney General Zebular  
9 Madison not sufficient service of process). As to Officer J. Mills, Plaintiff has not effectuated  
10 service of process within the 90 days required by Fed. R. Civ. P. 4(m).

11 Nonetheless, the Court in its discretion should extend the service of process deadline to  
12 **February 6, 2017**. To avoid dismissal, by that date, Plaintiff should:

13 (1) Properly serve Officer J. Mills of the University Place Police Department with a copy  
14 of the summons and Amended Complaint (Dkt. 4); and  
15 (2) File proof of service with the Court, demonstrating Plaintiff’s compliance with Fed.  
16 R. Civ. P. 4. Plaintiff should not herself effectuate service of process. *See* Fed. R. Civ.  
17 P. 4(c)(1)(2).

18 D. Show cause as to Joint Status Report.

19 Under the terms of the Order Regarding Initial Disclosures and Joint Status Report (Dkt.  
20 10), a Joint Status Report was due December 15, 2016. Dkt. 10. On December 20, 2016, the  
21 Court reminded Plaintiff that no Joint Status Report had been filed. Dkt. 31 at 3. To date, no  
22 Joint Status Report has been filed.

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1 The case will be dismissed for failure to prosecute unless Plaintiff files a Joint Status  
2 Report on or before **February 6, 2017**.

3 **CONCLUSION**

4 THEREFORE, it is HEREBY ORDERED:

5 Defendant City of Lakewood's Motion to Dismiss Pursuant to FRCP 12(b)(6) (Dkt. 22) is  
6 GRANTED. Defendant City of Lakewood is DISMISSED from the case.

7 Plaintiff's LCR 7 Cross Motion (k) and (l) Withdrawing and Renoting Pending Motions  
8 (Dkt. 37), Motion for Default (Dkt. 38), and Motion for Default Judgment (Dkt. 39) are  
9 HEREBY DENIED.

10 Plaintiff is FURTHER ORDERED, by **February 6, 2017**, to (1) properly serve Officer J.  
11 Mills of the University Place Police Department a copy of the summons and Amended  
12 Complaint (Dkt. 4); (2) file proof of service with the Court, demonstrating compliance with Fed.  
13 R. Civ. P. 4; and (3) file the Joint Status Report.

14 IT IS SO ORDERED.

15 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
16 to any party appearing *pro se* at said party's last known address.

17 Dated this 10<sup>th</sup> day of January, 2017.

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20 ROBERT J. BRYAN  
21 United States District Judge  
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